

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITE STATES,

v.

98-cr-065

DONOVAN SMITH,

Defendant.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

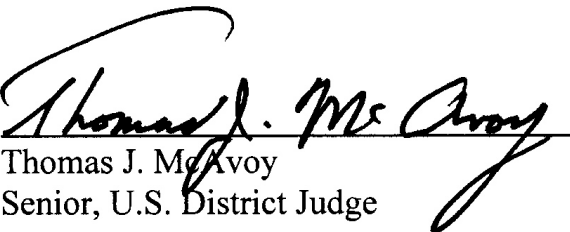
This matter has been remanded by the Second Circuit to consider whether resentencing is appropriate. Upon consideration of all relevant factors contained in 18 U.S.C. § 3553(e) and the non-binding recommendations found in the Sentencing Guidelines, the Court finds that the previously imposed sentence of 121 months is appropriate.

In reaffirming this sentence, the Court understands that it is not bound by the statutory minimum sentence contained in 21 U.S.C. §§ 841(b)(1)(A) or (b)(1)(B), but that it is bound by the twenty year statutory maximum at 21 U.S.C. § 841(b)(1)(C). The Court continues to find that the previously granted two-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1 is appropriate. In light of this Court's previous finding that Defendant was responsible for more than 150 grams of crack cocaine and taking into consideration the acceptance of responsibility, Defendant has an offense level of 32. See U.S.S.G. §§ 2D1.1; 3E1.1. The safety valve reduction is inapplicable here because there is no statutory minimum sentence. See U.S.S.G. § 5C1.2; 18 U.S.C. § 813(a)(1)(C).

The Court does not find any other grounds to deviate from the recommendations contained in the Sentencing Guidelines. Accordingly, the Court declines to resentence Defendant and reaffirms the sentence of 121 months.

IT IS SO ORDERED.

Dated: August 18, 2005


Thomas J. McAvoy
Senior, U.S. District Judge